

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA. CRIMINAL ACTION NO. 05-10048-RCL

V. . BOSTON, MASSACHUSETTS  
. JULY 15, 2005  
MANUEL DISLA, et al .  
. . . . .

TRANSCRIPT OF STATUS  
BEFORE THE HONORABLE ROBERT B. COLLINGS  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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I N D E X

Proceedings

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P R O C E E D I N G S

COURT CALLED INTO SESSION

THE CLERK: The case of the United States v. Aldadino, et al, Criminal Action No. 05-10048 will now be heard before this Court. Counsel please identify themselves for the record.

MR. LEVITT: Peter Levitt on behalf of the government. Good morning, Your Honor.

THE COURT: Good morning.

MR. ANDREWS: Good morning, Your Honor, Michael Andrews for Gladys Arce.

MS. BONILLA: Good morning, Your Honor, Victoria Bonilla on behalf of Leoanny Hernandez, standing in for Mr. Weinstein who represents Mr. Filpo, also standing in for Lenore Glaser who represents Mr. Diaz.

THE COURT: Okay.

MR. DOMINGUEZ: Good morning, Your Honor, Carlos Dominguez for Rosa Pena.

MR. CHAPMAN: Randy Chapman, Your Honor, for Mr. Disla.

THE COURT: Okay.

MR. HALPERN: Steve Halpern for Fermin Hernandez.

MR. VOCCOLA: Good morning, Your Honor, for Joseph Voccola for Mr. Ramirez.

THE COURT: Okay. All righty.

1 PAUSE

2 THE COURT: I'm just reviewing this report.

3 PAUSE

4 THE COURT: All right, tell me, Mr. Levitt, what's  
5 the situation you say with Fermin Hernandez, sorry.

6 MS. BONILLA: Well, regarding Mrs. Hernandez, -  
7 (inaudible - #11:47:34)- she just received the tapes or the CD,  
8 the discs at MCI-Framingham on July 5<sup>th</sup> and she's just had the  
9 opportunity to start reviewing them. So--

10 THE COURT: Which defendant is this?

11 MS. BONILLA: This would be Leoanny Hernandez.

12 THE COURT: Oh, okay. Well we've got the situation  
13 where Mr. Gillespie's client, Adneer Gonzalez, was not, you  
14 know, not brought into the district until a little bit later so  
15 I'm certainly, he's not quite to the point where you folks all  
16 are and of course I'd like to get things to the point where  
17 everyone's on the same page before I send it to Judge Lindsay.

18 It says the defendants request the final status be  
19 scheduled in approximately 30 days. Will that be sufficient  
20 time to review these, to complete your review of these tapes  
21 for defense counsel? Is 30 days enough time?

22 MS. BONILLA: I can only speak for myself and Ms.  
23 Hernandez and from speaking to Mr. Weinstein we would request a  
24 little bit longer time if the Court would so allow.

25 THE COURT: Okay.

1 MR. ANDREWS: I join in that or Ms. Arce does.

2 THE COURT: What is the situation with respect to the  
3 motion? The report says defense will address motions with the  
4 Court at the July 15<sup>th</sup> status conference.

5 MR. LEVITT: I put that in there, Your Honor, just  
6 because I hadn't spoken with all the defendants. I didn't want  
7 to speak for them and I thought if they had issues with respect  
8 to motions they could raise them with the Court today.

9 THE COURT: Are there going to be any non-discovery  
10 type motions from defense?

11 PAUSE

12 MR. CHAPMAN: What kind?

13 THE COURT: I'm talking about motions to dismiss,  
14 motions to suppress, things of that sort.

15 MR. CHAPMAN: I guess once I get through the  
16 discovery, Your Honor, because we are just now going through  
17 the warrant and the, on behalf of Mr. Disla, and he hasn't  
18 listened to the tapes yet. There may be, there was a  
19 consensual search in his case so there is possibly that there  
20 might be but I'm not even in a position to really intelligently  
21 discuss that yet because we're still sort of going through the  
22 discovery that's been provided.

23 THE COURT: Okay. Is that basically everyone else's  
24 position or does anyone have a different position than that?

25 MR. VOCCOLA: Your Honor, on behalf of Mr. Ramirez I

1 think that would be his position also. I did file some  
2 discovery motions. I was going to speak to Mr. Levitt about  
3 those today.

4 THE COURT: Yeah, we'll get to those in a minute.

5 MR. VOCCOLA: All right.

6 THE COURT: Well, I think the best thing to do is to  
7 continue this for a further final status conference in early  
8 September by which time the defendants get their counsel to  
9 have completed their review of the, of all the tapes. How  
10 about Wednesday the 14<sup>th</sup> of September? Any problem with that?

11 MR. CHAPMAN: That's fine on behalf of Mr. Disla,  
12 Your Honor.

13 THE COURT: Okay. We'll do it at 11:30 a.m., and  
14 I'll ask that a joint status report be filed, that an updated  
15 joint status report be filed. And at that time you're to tell  
16 me whether or not you want time to file motions and if so how  
17 much time and we'll set that then.

18 Now--

19 MR. LEVITT: Your Honor, I'd just move that the time  
20 from today until then--

21 THE COURT: Oh, I'll exclude it.

22 MR. LEVITT: Okay.

23 THE COURT: I'll exclude it. And that basically will  
24 take care of Mr. Gillespie's motion where he actually requests  
25 until the 15<sup>th</sup> of September so that takes care of that.

1 PAUSE

2 THE COURT: Okay, does anyone have anything else  
3 other than the question of Mr. Ramirez' motions? Any counsel  
4 on any other matter they need to bring to my attention?

5 MR. ANDREWS: No, Your Honor.

6 THE COURT: Okay. I'll take up Mr. Ramirez' motions  
7 at this time. If any of you wish to go, you're free to go.

8 COUNSEL: Thank you, Your Honor.

9 COUNSEL: Thank you, Judge.

10 THE COURT: Now, what is the situation - this motion  
11 for exculpatory evidence the government seeks to strike it and  
12 what is your position with respect to that? These motions,  
13 filing these types of motions went out, you know, seven years  
14 ago when we instituted the new rules. Did you request this  
15 stuff pursuant to Local Rule 116.3?

16 MR. VOCCOLA: Well, Your Honor, the reason I did not  
17 request it pursuant to the local rule I filed it before the 15<sup>th</sup>  
18 of June. The reason I filed the motion was because I believe  
19 that the government may have that type of information available  
20 to it if the matter proceeds to trial. And specifically, Your  
21 Honor, that's why the motion was sent forth.

22 THE COURT: Except that the rule says before you file  
23 such a motion you have to write a letter of request. The rule  
24 is pretty clear on that--

25 MR. VOCCOLA: Yeah.



1 THE COURT: --and if you haven't written a letter  
2 requesting this then this motion is improper.

3 MR. VOCCOLA: Your Honor, I believe an initial  
4 discovery letter went out and I'm just looking to see if I have  
5 a copy of it.

6 THE COURT: From you?

7 MR. VOCCOLA: From me to Mr. Levitt.

8 THE COURT: Well it should have been - under the rule  
9 it has to be filed. Did you get such a letter, Mr. Levitt?

10 MR. LEVITT: I don't recall, Your Honor. I certainly  
11 don't recall getting anything specific on the types of matters  
12 that were requested in that lengthy motion.

13 THE COURT: Well, I'll give you a moment to find your  
14 letter.

15 MR. VOCCOLA: I don't have it with me, Your Honor,  
16 but I can re-file the letter to comply with the rules if  
17 there's any concern.

18 THE COURT: Yeah. I mean the whole purpose of these  
19 rules was to avoid these motions which were--

20 MR. VOCCOLA: Uh-huh.

21 THE COURT: --you know, it used to be battle of the  
22 word processor. You know, defense counsel called for their  
23 word processor motion and the government would have their word  
24 have their word processor response and it was just a very, very  
25 inefficient way of doing it. So I'm going to deny the motion

1 for exculpatory evidence without prejudice. And I'm going to  
2 deny the government's motion to strike. I don't think there's  
3 any need to strike it but it's denied without prejudice and you  
4 need to follow the local rules.

5 Now motion for a 12(b) designation, as I recall--

6 MR. VOCCOLA: That--

7 THE COURT: --I'm in a different courtroom--

8 MR. VOCCOLA: Yeah.

9 THE COURT: --and I don't have the book but as I  
10 recall that's not the proper subject of a motion. It's  
11 something that you, it's a permissive thing as I recall how the  
12 rule works.

13 MR. VOCCOLA: Your Honor, I was going to allow that  
14 one to pass with the Court's permission.

15 THE COURT: What do you mean pass?

16 MR. VOCCOLA: I don't need to argue it, Your Honor.

17 THE COURT: But it's still on the docket so I got to  
18 do something with it.

19 MR. VOCCOLA: I can--

20 THE COURT: Are you withdrawing it?

21 MR. VOCCOLA: I can withdraw it, Your Honor.

22 THE COURT: Okay. That motion is withdrawn. And  
23 that leaves us with the situation with respect to Grand Jury  
24 information.

25 PAUSE

1 MR. LEVITT: Your Honor, with respect to that  
2 motion--

3 THE COURT: Yeah.

4 MR. LEVITT: --I object to it for the same reason as  
5 to the motion with respect to the exculpatory evidence. There  
6 is no letter sent with respect to that motion either.

7 THE COURT: Well, that's a little, that's a little -  
8 that's a little different. It's not something that's covered  
9 by the local rules whereas, you know, exculpatory evidence is  
10 pretty well laid out. The reason for the letter request is  
11 that it's covered by the local rules whereas this stuff is not,  
12 so I'm not quite sure that that comes within the meaning of  
13 seeking discovery in the sense it's used in the rules.

14 MR. VOCCOLA: Your Honor, I can explain to the Court  
15 the reason--

16 THE COURT: All right, go ahead.

17 MR. VOCCOLA: --for the motion. Your Honor, during  
18 the detention hearing it became apparent that there was one  
19 individual in particular who was capable or allegedly capable  
20 of identifying my client's voice. That was Detective Michael  
21 Long who is a Providence police detective. During the  
22 detention hearing it was stated it was stated he was a Rhode  
23 Island state police detective. The reason for the motion for  
24 the disclosure of grand jury information I'm curious as to how  
25 my client was identified to the members of the grand jury and

1 who gave that testimony identifying his voice. That's what  
2 the motion I believe in essence allows for. It came up during  
3 the detention hearing. I followed it up with this motion. If  
4 it's not included in the letter I can re-draft the letter,  
5 frame it specifically or tailor toward what is asked in the  
6 motion.

7 THE COURT: Well what you want are the transcripts of  
8 this person's testimony, is that what you're seeking?

9 MR. VOCCOLA: That's what I would ask for, Your  
10 Honor, in essence. That's the reason for the motion.

11 THE COURT: Well, the problem you're up against there  
12 is you've got a federal statute that prohibits me ordering  
13 prior statements of witnesses under the Jencks Act. I mean,  
14 you certainly would be entitled to it at time of trial. Under  
15 the statute it's after the witness testifies on direct, but the  
16 usual practice is that the government turns that over at an  
17 earlier time, about the time of trial but the statute says I  
18 don't have the power to grant you prior statements of  
19 witnesses.

20 MR. VOCCOLA: I realize that, Your Honor, but it does  
21 impinge on his - I mean that evidence was submitted to the  
22 Court at the detention hearing. If it was not addressed at the  
23 detention hearing--

24 THE COURT: Well wait a minute. Let's, I suppose we  
25 should refine this a little more. Refresh my recollection as

1 to what was said at the detention hearing. I know that police  
2 officer didn't testify but what was there testimony as to the  
3 manner in which your client's voice was identified?

4 MR. VOCCOLA: That's correct, Your Honor.

5 THE COURT: Refresh my recollection as to what the  
6 testimony was at the detention hearing.

7 MR. VOCCOLA: The female agent who testified, I can't  
8 remember her name right now. I'm sure Mr. Levitt does.

9 MR. LEVITT: Special Agent Denise Biehn--

10 THE COURT: Okay.

11 MR. LEVITT: --testified, Your Honor.

12 MR. VOCCOLA: That particular agent indicated, Your  
13 Honor, that another agent told her about my client's voice or  
14 identified the voice of Mr. Ramirez. Then she also indicated  
15 that that particular agent didn't actually hear the voice  
16 firsthand but learned about the voice from Detective Long. We  
17 didn't know when it was identified, where it was identified,  
18 where this action took place, if my memory serves me correct at  
19 the detention hearing. Once that issue came up obviously, you  
20 know, it became of great concern to us in preparation of Mr.  
21 Ramirez' defense. Now--

22 THE COURT: Well, I mean as to a voice identification  
23 just like an eyewitness identification, you know, a photo  
24 lineup or a photo array or a lineup or something like that it's  
25 certainly subject to a hearing from the government indicate,

1 give you discovery as to who, when, where, you know when this  
2 voice identification occurred, where it occurred and the manner  
3 in which the identification was conducted. That I think you're  
4 entitled to just like I'd, you know, disclose the photographs  
5 used in an array and the date and time and the place at which  
6 the array was shown to any witnesses. If that's what you're  
7 seeking I don't if there's a real problem but get a grand jury  
8 testimony is. Now is that the type of information you're  
9 seeking?

10 MR. VOCCOLA: Yes, partially, Your Honor.

11 THE COURT: What else would you be seeking?

12 MR. VOCCOLA: Well, the motion also asks for any  
13 copies of all orders of immunity and letters of immunity of  
14 witnesses who testified before the Grand Jury. I don't think  
15 that-

16 THE COURT: Well see that's covered by the, that is  
17 covered by the local rules cause that's a promise, reward or  
18 inducement. And as I say I don't, it's a little hamper here  
19 not having them before me but if you look at the local rules,  
20 local Rule 116, that speaks exactly as to when you're entitled  
21 to that. I can't recall whether that's something up front or  
22 is that 21 days before trial, do you recall, Mr. Levitt?

23 MR. LEVITT: Your Honor, the - it's sort of done in  
24 both ways. It is something that is covered with the automatic  
25 disclosure.

1 THE COURT: Okay.

2 MR. LEVITT: It is something that was covered in the  
3 letter that went out to--

4 THE COURT: Okay.

5 MR. LEVITT: --counsel. And then it's also covered  
6 again at 21 days--

7 THE COURT: Okay.

8 MR. LEVITT: --for anything that's happened in the  
9 interim.

10 THE COURT: Okay.

11 MR. LEVITT: So anything that--

12 THE COURT: Okay. Well, that's something that's  
13 covered by the local rules Mr., so that would not be something  
14 that I would, Mr. Voccola, that's not something that I would,  
15 you know, alter that timing. Did you in your initial letter  
16 indicate anyone, any of the witnesses who have received  
17 immunity in this case?

18 MR. VOCCOLA: The letter would address that, Your  
19 Honor. It would specifically refer to the--

20 THE COURT: No, I asked Mr. Levitt if he--

21 MR. LEVITT: Yeah.

22 MR. VOCCOLA: All right.

23 THE COURT: --if he in his initial disclosures  
24 indicated as to whether or not or disclosed any witnesses who  
25 received immunity who are going to testify at trial?

1 MR. LEVITT: I did, Your Honor.

2 THE COURT: Okay.

3 MR. LEVITT: I don't believe there were any.

4 THE COURT: Okay. So that answers that.

5 MR. VOCCOLA: Right.

6 THE COURT: Now what else did you need with respect  
7 to this voice identification?

8 MR. VOCCOLA: With respect to the voice  
9 identification I think we addressed that, Your Honor.

10 THE COURT: All right. How about--

11 MR. LEVITT: Your Honor, could I just speak to that  
12 for a moment because I think this is - I am more than happy to  
13 provide all that information that you just addressed with  
14 respect to when it happened, who did it--

15 THE COURT: Yep.

16 MR. LEVITT: --and this is the type of thing that  
17 wouldn't be done by most--

18 THE COURT: You're right. Now we're getting back  
19 into the letter--

20 MR. LEVITT: Yeah. I mean--

21 THE COURT: --area. You're right. No, you're right.

22 MR. LEVITT: I mean if Mr. Voccola picked up the  
23 phone and called me and asked me for that and said, you know,  
24 I'll follow it up with a letter, I would have said fine.

25 THE COURT: Okay. I think he's got a point there.



1 You know, when I was talking about Grand Jury I, you know, it  
2 was this stuff about the number of grand jurors and all that  
3 and that's why I was saying that that was really outside the  
4 purview of the local rules. But this really is, so I think in  
5 your letter that you're going to send to Mr. Levitt ask what  
6 you want to ask about the voice identification. Don't ask for  
7 grand jury transcripts because I can't - and he's going to say  
8 no to that and I'm going to say no to that because the law  
9 requires me to say no to that. But as far as, you know, how  
10 the voice identification procedure occurred, when, where,  
11 manner, et cetera, you know, I think he's going to be willing  
12 to give you that so just include that in your letter.

13 If for some reason once you got the letter, his  
14 answer to the letter you're dissatisfied then you can file the  
15 motion. That was the whole idea you see behind this letter  
16 writing. The idea is write a letter to the government.  
17 They're liable to give you a lot of stuff in which case there's  
18 no need for any motion. So let's do that with respect to the  
19 voice identification.

20 Now is there anything else with respect to the grand  
21 jury? We got the - he's indicated that the immunity thing is  
22 covered by the local rules. The voice identification you're  
23 going to ask him for the discovery and he's indicated he's  
24 willing to give you certain discovery with respect to that.  
25 What else is here that you're entitled to on this motion for

1 disclosure of grand jury information?

2 MR. VOCCOLA: Well, Your Honor, we just, I mean we  
3 have an abundance of just I guess procedural caution on our  
4 behalf. We asked how many grand jurors were present and how  
5 many actually deliberated. Who was there initially and how  
6 many actually participated in the deliberation.

7 THE COURT: Yeah, I don't think you're entitled to  
8 that Mr. Voccola. There has to be something more than - it's  
9 not something you just routinely ask for. There's got to be  
10 some particularized need for that. The First Circuit has held  
11 that. I can remember when I was an assistant U.S. attorney  
12 reading a case whose name I can't recall at the present time,  
13 but Judge Aldridge wrote an opinion with respect to that issue.

14 All right, I'm going to deny the motion for  
15 disclosure of Grand Jury information. As I say you have the  
16 information about the immunities and you're going to ask for  
17 the voice identification in your letter. And the motion for  
18 exculpatory evidence is denied without prejudice. And the  
19 motion for a 12(b) designation is withdrawn.

20 Okay, anything else I need to take up?

21 MR. VOCCOLA: Nothing else, Your Honor.

22 THE COURT: Okay. Thank you very much.

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24 //

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## CERTIFICATION

I, Maryann V. Young, court approved transcriber, certify that the foregoing is a correct transcript from the official digital sound recording of the proceedings in the above-entitled matter.

/s/ Maryann V. Young

July 10, 2008

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